

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA,)

4 Plaintiff,)

5 v.)

6 PIROUZ SEDAGHATY, et al.,)

7 Defendants.)

No. 05-60008-2-HO

July 13, 2009

Eugene, Oregon

8
9 TRANSCRIPT OF PROCEEDINGS

10 BEFORE THE HONORABLE MICHAEL R. HOGAN

11 UNITED STATES DISTRICT COURT JUDGE

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1 (Monday, July 13, 2009; 9:55 a.m.)

2 P R O C E E D I N G S

3 THE CLERK: Now is the time set for the matter
4 of the *United States of America versus Pirouz Sedaghaty*,
5 Case No. 05-60008, time set for oral argument on motion
6 No. 181 to suppress.

7 THE COURT: Thank you, Ms. Weller. Good
8 morning, everyone. I am very familiar with your
9 briefing. I had a few days off last week, and didn't
10 take a novel so I read your stuff several times. I
11 appreciate you not repeating it. I could refer you to
12 the page number, probably, in your brief.

13 I will tell you in advance that while I'm -- I
14 assume Agent Anderson is present, Mr. Cardani?

15 MR. CARDANI: Yes, Your Honor.

16 THE COURT: And I am willing to accept her
17 affidavit as her direct testimony and make her available
18 for cross-examination.

19 I don't think the pleadings thus far justify a
20 *Franks* hearing. All of us are very familiar with the
21 standards to justify a *Franks* hearing. And all of
22 the -- the law is not complicated on most of these
23 issues.

24 I was thinking -- Mr. Wax, what does your bar
25 number start with, what two numbers?

1 MR. WAX: My Oregon number is 85.

2 THE COURT: And the earlier number?

3 MR. WAX: 76.

4 THE COURT: Mine is 71. But I was thinking
5 when I was looking -- I looked at Leon again. I
6 remember when that case came out, and so do you,
7 Mr. Matasar, you remember. Were either of you
8 practicing then?

9 MR. GORDER: I was, Your Honor.

10 THE COURT: Yeah. All right. So we all know
11 the cases. I used to hear a lot more motions to
12 suppress as a magistrate judge, but I've had plenty of
13 them.

14 So that's kind of the way I see the case right
15 now. And if you have some preliminary matters, fine.
16 If you folks for the government want to ask Ms. Anderson
17 a few questions, go ahead, but I'd rather you not repeat
18 the affidavit, quite frankly. I am very familiar with
19 it. And I will accept that as the direct testimony.
20 She should be available for cross-examination, however,
21 and then any follow-up you want to do. Okay?

22 Do you have anything preliminarily?

23 MR. WAX: Yes, we do, Your Honor.

24 THE COURT: All right.

25 MR. WAX: First, I'd like to hand up to the

1 court an exhibit that came into being in the public
2 sphere on Friday. I marked it with an SH-1 as
3 Suppression Hearing Exhibit Number 1. Gave a copy of it
4 earlier to Mr. Gorder. That unclassified version of a
5 report by the five inspectors general or five of the
6 intelligence agencies has additional information
7 regarding the existence of what they are now calling the
8 PSP. What had previously been called the TSP, Terrorist
9 Surveillance Program, they are now calling it the
10 President's Surveillance Program.

11 Of particular interest, I believe, to the
12 proceedings today are the references on pages 18 and 19
13 to the manner in which the Department of Justice and
14 then it would appear as though the United States
15 Attorneys' Offices have been kept in the dark with
16 respect to their ability to comply with their discovery
17 obligations. And I would ask you to take a look at
18 that.

19 THE COURT: Paragraph D?

20 MR. WAX: It's pages 18 and 19 --

21 THE COURT: You are talking about discovery?

22 MR. WAX: -- discovery issues.

23 THE COURT: The discovery issues, fine.

24 MR. WAX: And there are references there to the
25 manner in which the Department of Justice was in part

1 kept in the dark and unable to fulfill some of its
2 discovery obligations, I think is relevant.

3 THE COURT: Mr. Baker.

4 Go ahead.

5 MR. WAX: So we have that.

6 A second preliminary matter also involves
7 discovery of matters that we believe we need in order to
8 effectively cross-examine this morning.

9 In the discovery order that you issued just a
10 week or so ago, we do not see a ruling on item Number 45
11 in the supplemental discovery motion that we filed on
12 March 17th that was referenced again in the pleading
13 that we filed on November 6th that listed the discovery
14 matters that we believe were in dispute. Those are the
15 forensic reports related to the computer searches.

16 In addressing the issues with Ms. Anderson
17 about the searches of the computers, the protocol, how
18 they proceeded, what came first, we believe that we need
19 to have those.

20 Another discovery matter emerges from the
21 affidavit or declaration that Ms. Anderson prepared that
22 was provided as an attachment or exhibit to the
23 government's response to our motion to suppress. In
24 paragraph 12, she references a search warrant protocol.
25 It would appear as though that is a written protocol.

1 We do not have it. We believe that we need to have it
2 before we can effectively cross-examine.

3 At paragraph 21 of her affidavit, she
4 references another protocol that was designed for the
5 searches of the computers. Again, we believe we need to
6 have that in order to effectively cross-examine.

7 Would you like me to stop there? I have a
8 couple of other preliminary matters that do not involve
9 discovery or --

10 THE COURT: I'd like you to go through your
11 list. Go ahead.

12 MR. WAX: Okay. The cross-examination that we
13 would anticipate of Ms. Anderson would cover several
14 aspects of the motion to suppress, including the genesis
15 of the warrant.

16 In the declaration that she filed, she says she
17 did not have awareness of certain aspects related to
18 classified or unlawful classified activities. We
19 pointed out, we believe, that there is an inconsistency,
20 as we see it, between what she says and what was said by
21 Director Szubin in the OFAC civil litigation.

22 In questioning about that, we just want to, you
23 know, make the court aware that we would anticipate that
24 that could stray into classified areas. So it's not
25 something I think that we would be able to go into in

1 this proceeding today.

2 THE COURT: No. You can ask her what she knew,
3 but you can't go into classified material today.

4 MR. WAX: So that's one area in which we think
5 that we will probably need to come back for another
6 proceeding that would be classified.

7 With respect to the *Franks* issue, I understood
8 what, you know, you indicated your preliminary, you
9 know, view of *Franks* is. Again, we believe that there
10 is need for questioning about classified material in
11 order to present what we understand the law requires us
12 to present in order to get a full-blown hearing. That,
13 I think, is something that this new exhibit that we
14 handed up today helps to fulfill.

15 THE COURT: And you don't need me to go through
16 the standards on *Franks* hearings?

17 MR. WAX: Understood.

18 THE COURT: Yeah.

19 MR. WAX: We filed last week a notice -- a
20 formal notice under CIPA with respect to the use of
21 classified material. And, again, we believe that that
22 would be something that the court would need to take up
23 before we would be able to go forward with certain
24 aspects of the questioning that we think needs to take
25 place with respect to this motion to suppress.

1 May I have one moment, please?

2 THE COURT: Uh-huh.

3 (Discussion held off the record between Mr. Wax
4 and Mr. Matasar.)

5 MR. WAX: In terms of the CIPA filing, Your
6 Honor, we're just wondering how the court will want to
7 proceed on that, and how the court views that relating
8 to the types of production and inquiry that we believe
9 is appropriate and authorized in the *Franks* aspect of
10 the hearing as well as the *Murray* prior illegality
11 aspect of the hearing.

12 THE COURT: All right. I am not going to sort
13 of make preliminary remarks about that. In your reply
14 filed late Friday afternoon, you speculated -- well,
15 speculated might be -- have a tone to it. You stated
16 that the decision making appeared to involve a person
17 other than Ms. Anderson. And I don't know what the
18 facts are in that regard, but we will not go into
19 classified material today.

20 I specifically told our court security officer
21 she didn't have to be here today. And I'm going to
22 consult with her on what other judges have done before I
23 have any hearing that involves that.

24 On a couple of other matters, was the search
25 warrant protocol or protocols concerning that in the

1 computers written or oral?

2 MR. CARDANI: Judge, I -- two protocols were
3 mentioned. The first one were a dialogue between Agent
4 Anderson and myself leading up to the warrant. I gave
5 her written instructions. She summarized them.
6 Almost -- repeated them almost verbatim in her present
7 statement. Whether she has them available or not, I
8 don't know, but they are virtually -- I think the
9 testimony will be that they are virtually verbatim to
10 the e-mail dialogue I had with her and phone
11 instructions.

12 THE COURT: Okay.

13 MR. CARDANI: On the second one, on the search
14 term protocol, she does have a list of many search terms
15 that were provided, and we do have that available. But
16 we've not been asked to provide it, but we could make
17 copies right now if the court wants them and give them
18 to the defense.

19 THE COURT: All right. Why don't we do that.
20 And we'll take a short recess.

21 And, David, I want to talk to you.

22 (Recess: 10:08 until 10:11 a.m.)

23 THE COURT: Whenever you are ready, Counsel.

24 MR. CARDANI: Judge, those copies are being
25 prepared for the first item I talked about. If I might

1 just make a few statements before we call our witness.

2 THE COURT: Yes, you can go ahead.

3 MR. CARDANI: As I see it, this is, to a large
4 extent, a garden variety challenge of a search warrant
5 that the court has seen many times. And the briefing
6 sets forth all of the legal standards. And I know the
7 court is familiar with that.

8 One issue that I didn't raise in our brief that
9 I did want to raise here because I don't want to be
10 foreclosed from arguing it down the line if we need to
11 is that of standing.

12 Mr. Sedaghaty was out of the country at the
13 time of this warrant. And while he lived at this -- at
14 the residence that we searched before he left, and while
15 he was a corporate officer of al-Haramain before he
16 left, and when it was searched, the *SDI* case that came
17 out of the Ninth Circuit last month contains an
18 interesting discussion about whether a corporate officer
19 retains a sufficient privacy interest in a corporate
20 property. And so I raise the issue as a potential legal
21 bar to challenging the warrant.

22 Frankly, I don't think it's a strong argument,
23 but I do want the record to reflect that we are raising
24 standing as an issue based on the *SDI* case.

25 THE COURT: All right.

1 MR. CARDANI: The other argument --

2 THE COURT: You made your strong and your weak
3 arguments here.

4 MR. CARDANI: Yeah. I think we present a lot
5 of strong arguments in our brief, Your Honor.

6 THE COURT: Okay.

7 MR. CARDANI: The court knows that the burden
8 is on the defense on every one of the issues --

9 THE COURT: Except consent.

10 MR. CARDANI: -- save one, except consent. The
11 court knows that we bear the burden on that. We will
12 call Special Agent Anderson on the issue of consent.

13 We don't want this to become a free-for-all on
14 the other issues because the burden is on them. The
15 court has already found, I believe, that there is
16 insufficient grounds to have a *Franks* hearing, so I
17 don't want this to raise -- this to become the
18 equivalent of a *Franks* hearing with Colleen Anderson on
19 the stand.

20 And in that vein, if this case has an appellate
21 future, I would hope that the court would be somewhat
22 willing to explain its rulings. The court has had so
23 much experience on this issue --

24 THE COURT: This is one I'll be issuing
25 something in writing, and no question about that.

1 Some of the -- a number of the arguments raised
2 by the defendant, in logic we call them negative
3 pregnant. We say something either exists or it doesn't
4 so other things must exist or not. And that's not the
5 kind of argument that gets you a *Franks* hearing,
6 frankly -- frankly.

7 MR. CARDANI: All right. The witness has been
8 instructed, Your Honor, that if any question reasonably
9 asks for a response involving classified information to
10 not answer it. It's not that she's trying to be
11 recalcitrant, but for obvious reasons, we can't have
12 classified information shared in this setting right now.

13 Judge, I'm providing Mr. Matasar and Mr. Wax
14 with a copy of a document called Search Terms. I think
15 during Colleen Anderson's testimony, we'll hear more
16 about it. The court can be provided a copy of it. But
17 these are -- I'll just give it to the witness.

18 In terms of the other protocol, talking at the
19 break, the e-mails that I sent to her and exchanged with
20 her are work product of the government. But to the
21 extent that she relied upon them, the protocol -- in her
22 present statement, she reveals the protocol almost
23 verbatim, and I think that that's sufficient in terms of
24 discovery. So we would ask not to have to disclose
25 internal work product e-mails between us and Special

1 Agent Anderson. There is nothing --

2 THE COURT: Provide it to the court for in
3 camera review, please.

4 MR. CARDANI: Okay. And I think that's it at
5 this point. The only evidence we'll be offering is
6 Special Agent Anderson on consent and to adopt her
7 affidavit.

8 THE COURT: Thank you. One other item first,
9 Mr. Wax was correct. We omitted a ruling on item Number
10 45 in the discovery motion referred to; and that,
11 frankly, was because there wasn't a lot of discussion by
12 either side about it and we assumed it was worked out,
13 taken care of.

14 Now, if -- I don't really want to dig back into
15 that paper at this moment, but I want to be able to go
16 ahead with the proceeding, too.

17 MR. CARDANI: I don't have the discovery ruling
18 and I don't have the request.

19 THE COURT: We skipped it.

20 MR. CARDANI: What is the request?

21 THE COURT: For forensic reports concerning
22 computer searches.

23 MR. CARDANI: All right. There is an expert
24 report being prepared for -- to cover most of that by an
25 expert who's likely to testify at trial. I think that's

1 going to cover -- that will cover all of this, so I'm
2 not aware --

3 THE COURT: When do you expect that to be
4 ready?

5 MR. CARDANI: A couple of weeks.

6 THE COURT: All right. Thank you. You'll
7 provide that?

8 MR. CARDANI: Yes.

9 THE COURT: Yeah, okay. Thank you. Call your
10 witness.

11 MR. CARDANI: Yes. The government calls
12 Special Agent Colleen Anderson.

13 THE CLERK: Agent Anderson, if I could have you
14 please step forward to the center of the courtroom.
15 Thank you. Please raise your right hand.

16 (The witness was sworn.)

17 THE CLERK: Please take the witness stand.

18 THE WITNESS: Good morning.

19 THE COURT: Good morning.

20 THE CLERK: Agent, if I could please have you
21 state your full name for the record, spelling your last
22 name.

23 THE WITNESS: Sure. It's Colleen Anderson,
24 A-N-D-E-R-S-O-N.

25 THE CLERK: Thank you.

1 MR. CARDANI: May I proceed?

2 THE COURT: Yes, please.

3 DIRECT EXAMINATION

4 BY MR. CARDANI:

5 Q. You are employed by the IRS?

6 A. Yes, I am.

7 Q. You're a special agent working criminal cases?

8 A. Yes.

9 Q. And you are also an accountant by training?

10 A. Yes.

11 Q. You are one of the case agents in the case
12 before the court right now?

13 A. Yes, I am.

14 Q. You were the affiant that presented an
15 affidavit in support of a search warrant application
16 before Judge Cooney many years ago?

17 A. Yes.

18 Q. The defense, as you know, has filed a motion to
19 suppress evidence coming out of that search. Have you
20 reviewed their response -- I mean, I'm sorry, the motion
21 and its supporting memorandum?

22 A. Yes, I have.

23 Q. Did you assist the government in preparing a
24 response, and more specifically, did you prepare a
25 statement that you captioned In re: Document 183,

1 United States versus Pirouz Sedaghaty?

2 A. Yes, I did.

3 Q. And for the record, that's an attachment. I
4 believe it's Number 1 to CR 192, the government's
5 response.

6 You personally prepared that statement?

7 A. I did.

8 Q. To the best of your knowledge as you sit here
9 today, does the statement contain accurate information?

10 A. Yes, it does.

11 Q. Do you adopt it as your testimony for today?

12 A. I do.

13 Q. Did you also -- one of the issues that you
14 addressed is that of consent. The statement indicates
15 that Jonah Sedaghaty, the defendant's son, signed two
16 consent forms in your presence during the warrant; is
17 that accurate?

18 A. Yes, that's correct.

19 Q. And these are attached -- copies of them are
20 attached to defense memorandum, which is CR 183. And
21 the first one is Exhibit Number 3. Have you looked at
22 those recently?

23 A. Yes, I have.

24 Q. One is a consent to search. And it contains
25 purported signatures of Dave Carroll and Colleen

1 Anderson. Are you aware of those signatures?

2 A. I am.

3 Q. Is that your signature on the lower left-hand
4 corner? I can show it to you if you want.

5 A. Exhibit 3?

6 Q. Yes.

7 A. And, excuse me, is this the consent for search?

8 Q. Yes.

9 A. Yes, that's my signature.

10 Q. That references the search of two green
11 trailers located at 3800 South Highway 99?

12 A. Yes, it does.

13 Q. Whose signature is on the right side?

14 A. That would be the signature of Jonah Sedaghaty.

15 Q. How do you know that?

16 A. Because I was present when he signed it.

17 Q. And was that -- was an attorney named David
18 Berger, was he present when this was signed?

19 A. Yes, he was.

20 Q. So that covered the green trailers. After the
21 search, there was another consent. And this is Exhibit
22 Number 6 to the same document, CR 183. Do you have that
23 in front of you?

24 A. Yes, I do.

25 Q. Is that your signature on the lower left-hand

1 corner along with Dave Carroll's?

2 A. Yes, it is.

3 Q. And whose signature is on the right side?

4 A. That would be of Jonah Sedaghaty.

5 Q. And how do you know that?

6 A. Because I was present when he signed it.

7 Q. Was his attorney present when he signed it?

8 A. Yes, he was.

9 Q. Does this cover the consent to take items that
10 is attached in Exhibit 7 to that document, did you
11 prepare an inventory which chronicled all of the items
12 that were taken through the consent part of the search?

13 A. Yes. The IRS took an inventory of all the
14 items and printed it out, which was provided to
15 Mr. Sedaghaty.

16 Q. Then attached to your present statement is a
17 court resolution. This is an attachment to CR 192. On
18 the back end of your statement, there is one-page
19 corporate resolution. Do you have that in front of you?

20 A. I do.

21 Q. What is that?

22 A. That is a corporate resolution -- my
23 understanding it's a corporate resolution in which Jonah
24 Sedaghaty was added as a board member to al-Haramain
25 Islamic Foundation.

1 Q. How did you receive this?

2 A. I received this from Attorney David Berger.

3 Q. It's dated January 29, 2003. The warrant
4 was -- when was the warrant served?

5 A. February 2004.

6 Q. And in paragraph 1 it says Jonah Smith
7 Sedaghaty, a resident of Ashland, Oregon, U.S.A., is
8 elected as a director of al-Haramain Islamic Foundation.

9 A. Yes.

10 Q. And it contains the purported signatures of
11 Soliman al-Buthe and Perouz Sedit Ghaty and Jonah.

12 And then the second page to that is a
13 resignation of Jonah, a little bit after the search?

14 A. Yeah, approximately two days after the search.

15 Q. How did you get that?

16 A. That was also provided by Attorney David
17 Berger.

18 MR. CARDANI: Judge, I have no other questions
19 at this time.

20 THE COURT: Cross.

21 CROSS-EXAMINATION

22 BY MR. WAX:

23 Q. Ms. Anderson, could you start, please, by
24 telling us how many law enforcement officers were
25 present for the search.

1 A. I don't have that in front of me. There was
2 probably -- if you want me to estimate.

3 Q. Tell us as much as you can, please.

4 A. Approximately 12 to 15.

5 Q. How many different agencies were presented?

6 A. IRS Criminal Investigation. There was the
7 Federal Bureau of Investigation. Immigration and
8 Customs Enforcement. And we did have a Jackson County
9 Sheriff's Office detective there.

10 Q. Was there a pre-search meeting among the 12 to
11 15 agents?

12 A. Yes, that's standard.

13 Q. Where did that take place?

14 THE CLERK: I apologize for interrupting. Your
15 microphone doesn't seem to be picking up.

16 (Brief pause.)

17 MR. WAX: Judge, should we proceed?

18 THE COURT: Yes, please.

19 BY MR. WAX:

20 Q. Where did that meeting take place?

21 A. I believe that took place at the Ashland Police
22 Department.

23 Q. How many of the 12 to 15 officers and agents
24 were present?

25 A. I believe most of them, most of them. I'm not

1 sure if the sheriff's office detective was there or not.
2 I can't be certain of that. But all of the IRS people
3 were there. All of the FBI people, that I recall, that
4 were at the warrant. Immigration was there.

5 Q. Did you provide the members of the search team
6 anything in writing?

7 A. Yes. I provided them a copy of the items to be
8 seized, which they reviewed. And then after that, I
9 provided them with copies, each and every one of them,
10 of the affidavit for search warrant. And I sat there
11 and watched them review the affidavit.

12 Q. When you say a copy of the items to be seized,
13 are you referring to the Attachment B to the warrant or
14 are you referring to some other document?

15 A. No, Attachment B to the warrant.

16 Q. Do you recall any discussions about the scope
17 of the search that was authorized under Attachment A or
18 under Attachment B?

19 A. Yes. The discussion was basically myself
20 talking to the agents, and telling them that if there
21 were any questions pertaining to the scope of the
22 warrant or items that need to be seized, that they
23 should first bring it to our senior officer. And that
24 if she had any questions, she would then bring it to me.
25 And I was then to be shown all items that were marked as

1 potentially to be seized.

2 Q. Who was the seizing officer?

3 A. Special Agent Linda Czemerys.

4 Q. We have been provided -- if I am recalling
5 correctly -- one report in discovery with respect to
6 this search, and that was from you.

7 A. That's correct.

8 Q. Have you seen any reports prepared by any of
9 the other 12 to 15 law enforcement officers who
10 participated?

11 A. No, I don't believe so.

12 Q. Do you recall ever seeing any notes taken by
13 any of the other participants?

14 A. I recall that we had a general practice that we
15 had an agent that sketched out the building layout. I
16 don't know if you'd consider that notes.

17 Q. Who would that have been?

18 A. I'd have to refer back to the search warrant.
19 I don't --

20 Q. Can you do that quickly?

21 A. I don't have those items with me.

22 MR. WAX: All right. Is that something we can
23 have an agreement that the government will provide us
24 later on this week?

25 MR. CARDANI: Sure.

1 MR. WAX: Thank you.

2 BY MR. WAX:

3 Q. Have you seen any other notes that were taken
4 by any other law enforcement people?

5 A. No.

6 Q. Was there discussion about safety issues and
7 how you would actually enter the property?

8 A. Yes, there was.

9 Q. What plan did you formulate?

10 A. The plan that was formulated was that the entry
11 team would knock and announce. And at that point, they
12 would not have their guns drawn. Once any individuals
13 inside were identified and asked to exit the residence,
14 then we would perform the search as we normally do.

15 Q. When you arrived, can you describe for the
16 court, please, who went where. Give us a general
17 description of the layout of the property, how one
18 accesses it from the public highways, start there,
19 please.

20 A. Okay. As far as what I saw, I was one of the
21 entry cars, as far as what I saw, we came up the
22 driveway, and up and around to what would be considered
23 the main level. And at that point in time, the entry
24 team stopped short and went, I believe, downstairs to
25 enter the building, because I believe Jonah Sedaghaty

1 had actually came out of the residence at the time that
2 the cars were driving up to the premises.

3 Q. Had come out of the building in this downstairs
4 area you are describing or had come out of the building
5 in the upper area where you were located?

6 A. I did not personally see Mr. Sedaghaty exit the
7 residence, but from talking to one of the team leaders,
8 I understand that he came down from below, which would
9 be, my understanding, the personal part of the
10 residence.

11 Q. Who would have been down there among the law
12 enforcement officers?

13 A. The entry team.

14 Q. What are the names of the people?

15 A. The agent leading the entry would be Special
16 Agent Todd Anderson. And I believe that Special Agent
17 Linda Czemerys was another person on the entry. And
18 potentially Special Agent Brandy McKibben, but other
19 than that, I'd have to go back and check.

20 Q. To your knowledge, were all of the law
21 enforcement officers that day armed?

22 A. Except for one. I believe there might have
23 been an FBI analyst present that wasn't armed.

24 Q. An FBI analyst of computers?

25 A. I'm not sure what her position was exactly.

1 She, I believe, was an FBI analyst. Whatever they asked
2 them to do.

3 Q. What type of analyst would be present at a
4 search of that nature?

5 A. I don't know how to answer your question. I'm
6 not familiar with what this particular analyst's
7 function was.

8 Q. If the person was not a computer analyst, what
9 other types of analysts would be present at a search of
10 this nature?

11 A. Well, FBI analysts have many different
12 functions. I believe this one could possibly have been
13 one that input records, for instance. I've dealt with
14 those type of analysts that input bank records, they
15 organize records.

16 Q. What was this analyst's name?

17 A. I don't recall.

18 Q. Do you have that written down somewhere?

19 A. I believe so.

20 MR. WAX: Can we get agreement we can get that
21 from the government later?

22 MR. CARDANI: Yes.

23 MR. WAX: Thank you.

24 BY MR. WAX:

25 Q. Did you observe the interaction that took place

1 between the members of this entry team and Jonah
2 Sedaghaty?

3 A. The initial interaction? No.

4 Q. That's correct.

5 A. No. My understanding was, from talking to,
6 again, the team leader of the entry, Special Agent Todd
7 Anderson, that when he came out, he was advised to come
8 see me, which I was on the upper level, so that I could
9 show him the search warrant and the affidavit and
10 explain what was going on.

11 Q. Did Mr. Sedaghaty come to see you?

12 A. Yes, he did.

13 Q. Was he accompanied by any law enforcement
14 officers?

15 A. I don't recall. I don't recall.

16 Q. Were you armed that day?

17 A. Yes, I was.

18 Q. Were you wearing any sort of protective gear,
19 bullet proof vests, anything of that nature?

20 A. Yes, that's required.

21 Q. Were all of the other agents and law
22 enforcement people similarly dressed?

23 A. Yes, they were.

24 Q. Were there any firearms present other than
25 handguns?

1 A. I don't recall any other.

2 Q. Shotguns, rifles, assault weapons, anything of
3 that nature?

4 A. I don't recall any other weapons.

5 Q. The team came up the driveway. You drove up
6 the driveway. Did any other people enter the premises
7 through any other route?

8 A. No, no, just the entry team enters first.

9 Q. Did any other cars go onto the property where
10 the residence and prayer house are located via any route
11 other than the driveway that you took?

12 A. No.

13 Q. Were there any helicopters in use?

14 A. No.

15 Q. When you had your first interaction with
16 Mr. Sedaghaty, what, if anything, took place?

17 A. Mr. Sedaghaty came to talk to me, and I
18 informed him that we had a search warrant for the
19 premises. I read him the search warrant and showed him
20 the items to be seized. I asked him if he would like to
21 review the affidavit in which he said yes.

22 So once the residence was cleared by the team,
23 then I escorted Mr. Sedaghaty back into the residence,
24 and we picked an area that happened to be, I believe,
25 the prayer room, formerly known as the prayer room, and

1 that's where Mr. Sedaghaty and I had our discussions.

2 Q. Do you know if any law enforcement personnel
3 had taken him into the premises prior to his having his
4 first interaction with you?

5 A. I'm sorry, I don't understand the question.

6 Q. Prior to your first interaction with
7 Mr. Sedaghaty, do you know whether any other law
8 enforcement personnel had taken him into the building?

9 A. No, I'm not aware of that, no. I have no
10 knowledge of that occurring.

11 Q. Did you take him into the building and direct
12 him in any way while doing so?

13 A. Did I take him into the building? Are you
14 saying after the entry team did I take him into the
15 building?

16 Q. Before, during, or after.

17 A. Okay. Yes. After the entry team had made
18 their walk-through to secure the site, I informed
19 Mr. Sedaghaty that the search warrant was occurring,
20 and, again, went over the affidavit and everything with
21 him. And I said that if he would like to stay on the
22 premises, that we could do so. And I would pick a room,
23 which we did, the prayer room. And he would be free to
24 review the affidavit, which he did.

25 Q. Was he also told that he had the option of

1 leaving and not being present during the search?

2 A. Yes.

3 MR. WAX: Excuse me one moment, please, Your
4 Honor.

5 (Discussion held off the record between Mr. Wax
6 and Mr. Matasar.)

7 BY MR. WAX:

8 Q. Do you know where Mr. Sedaghaty was when the
9 entry team, as you are calling it, did its walk-through?

10 A. My understanding from talking to the team
11 leader was that Mr. Sedaghaty was downstairs in the
12 personal area with a girlfriend. And that when we came
13 up the driveway, he came out the door, but the
14 girlfriend remained inside.

15 Q. Do you know whether he was taken back into the
16 residence by the entry team and moved through the
17 residence by them as they did what you are calling a
18 walk-through?

19 A. I don't recall that. I can't say I recall
20 that.

21 Q. In the discussion we had with the court before
22 the testimony began, we referenced the protocol that you
23 described in paragraph 12 of the declaration that you
24 signed on July 6th. I'd like to ask you, please, about
25 that protocol. Tell us as much as you remember about

1 the instructions that you were given with respect to the
2 geographic scope of the warrant.

3 A. I don't believe the protocol talks about the --
4 let's see here. Are you referring to a certain item?
5 I'm trying to figure out what you are referring to.

6 THE COURT: I think he's talking about a
7 certain place.

8 BY MR. WAX:

9 Q. The geography. When you went to the address,
10 what did you expect to find in terms of buildings?

11 A. I believe I expected to find the residence and
12 what looked like a couple of trailers on the property.

13 Q. You were aware prior to going to the scene that
14 there were trailers on the property?

15 A. I believe so. I'm not sure if I knew there
16 were two trailers, but I did see something, obviously,
17 to the side of the residence, there were trees and
18 whatnot. I'm not sure if I was aware of two of them,
19 but there did appear to be some form of building there,
20 yeah.

21 Q. Had you been to that location prior to the date
22 of the search in February of 2004?

23 A. Yes. Prior to the search warrant, I had issued
24 a subpoena on al-Haramain Islamic Foundation, I'm not
25 sure how much earlier than that, but it would have been

1 probably June of 2003, maybe. Approximately the summer
2 of 2003.

3 Q. Do you recall having seen trailers on the
4 premises at that time?

5 A. I don't recall seeing trailers on the premises
6 at that time.

7 Q. Are you aware that FBI Agent Carroll had been
8 to that location prior to the date of the search?

9 A. Yes.

10 Q. Had you discussed with him his observations?

11 A. Yes.

12 Q. Are you aware that he had been there on more
13 than one occasion?

14 A. I'm aware of the one occasion. I'm not -- I'm
15 not sure that I'm aware of how many times he'd been at
16 the residence, but I was aware of the fact that he had
17 been at the residence at least once.

18 Q. Did you discuss with him the affidavit that you
19 prepared in support of the search warrant?

20 A. Did I discuss --

21 Q. Yes. Prior to the filing of the search warrant
22 application, did you discuss the affidavit that you were
23 in the process of preparing or were going to prepare
24 with the FBI Agent Carroll?

25 A. Yes.

1 Q. Did you discuss with him the warrant itself and
2 what you would include in Attachment A?

3 A. Yes.

4 Q. At any time in those conversations, do you
5 recall discussion about gee, what's there? A building?
6 A garage? An outbuilding? Trailers?

7 A. I believe there was a discussion. I don't
8 specifically recall talking about the trailers, but I do
9 recall being advised that there was some form of a tent
10 up there.

11 Q. Did you discuss what you should include in
12 Attachment A, the physical locations on the real
13 property that could be searched?

14 A. I discussed that with AUSA Christopher Cardani.
15 I don't recall specifically discussing that with Special
16 Agent Carroll.

17 Q. Did you discuss with Mr. Cardani the potential
18 that there would be or the fact that there were trailers
19 present on the property?

20 A. I believe we did discuss that.

21 Q. Was a decision made not to include the trailers
22 within the scope of Attachment A to the warrant?

23 A. I believe so, because the attachment to the
24 warrant talks about just the residence.

25 Q. What can you tell us about the discussion with

1 respect to noninclusion of the trailers?

2 A. I don't recall that discussion.

3 Q. Was that covered in any way in the written
4 material that Mr. Cardani provided to you?

5 A. Yes, it was covered in the search warrant
6 protocol, specifically Item C in my affidavit, page 5,
7 where it says the authority to search only covers the
8 residence. No trailers or outbuildings may be searched
9 unless there is consent provided by the occupant.

10 Q. What can you tell us about the reason why you
11 were not of the view that there was probable cause to
12 search the trailers?

13 MR. CARDANI: Judge, I'm going to object to --

14 THE COURT: Sustained. The legal standard
15 thrown in, Mr. Wax.

16 BY MR. WAX:

17 Q. In terms of the types of items that were
18 included within Attachment B, did you receive anything
19 in writing from Mr. Cardani about that?

20 A. Well, I would say that Item D in the search
21 warrant protocol, page 5, reflects the items to be
22 seized in the sense that it says that I will be a
23 seizure screener, if that's what you are asking.

24 Q. What guidance did you have in writing, if any,
25 with respect to the items that could legitimately be

1 seized under the warrant?

2 A. The guidance that I had pertaining to what
3 could be seized under the warrant is Attachment B itself
4 in the affidavit.

5 Q. Was there anything further than that provided
6 to you in writing by Mr. Cardani?

7 A. Just the search warrant protocol, which says
8 that if I had questions whether an item falls within the
9 scope of the warrant that I should contact him.

10 Q. During the course of execution of the warrant,
11 you determined that there were items within the trailers
12 that you wanted to seize, correct?

13 A. Yes. After we received consent to search the
14 trailers from Mr. Sedaghaty, there were items in there
15 that we would like -- we asked permission through
16 consent to take, yes.

17 Q. Were the trailers entered prior to the signing
18 of the consent by Jonah Sedaghaty?

19 A. No.

20 Q. Were the trailers opened prior to the signing
21 of the consent by Jonah Sedaghaty?

22 A. I don't believe so.

23 Q. Two consents were signed, correct?

24 A. That's correct.

25 Q. Your understanding of the first consent is that

1 it authorized what?

2 A. The first consent was requested so that we may
3 look in the trailers, search the trailers, that was the
4 purpose of the first consent.

5 Q. So the first consent was to open the door of
6 the trailers and go in?

7 A. That's correct.

8 Q. The second consent was obtained for what
9 distinct purpose?

10 A. The second consent was obtained so that we
11 requested the right to take items that we thought might
12 be pertinent from the trailers and also the residence
13 that may fall outside the scope of the warrant.

14 Q. With respect to items from either the trailers
15 or -- let me start again. With respect to items that
16 were located in the house, you are indicating to us that
17 there were some that were observed that you believed
18 were outside the scope of the warrant?

19 A. That's correct.

20 Q. Those, if I am reading paragraph 17 correctly,
21 included videotapes depicting mujahideen battlefield
22 scenes?

23 A. Which item are you referring to?

24 Q. In paragraph 17 of the affidavit of July 6th.

25 A. Yes.

1 Q. Now, the paragraph goes on to say that you had
2 a discussion with Mr. Cardani.

3 A. Uh-huh.

4 Q. Correct?

5 A. Yes.

6 Q. Following that discussion, it says you denied
7 the agent's request to seize some of the material.

8 A. That's correct.

9 Q. The material that was denied, is that the
10 material that is listed in the pages of the return that
11 followed the second consent?

12 A. The items that I denied originally were the
13 videotapes. There were numerous, numerous videotapes of
14 what appeared to be military type videos of what looked
15 like the U.S. capabilities of the army, navy, whatnot.
16 Those particular items are what I recall questioning or
17 basically denying the request that those be a part of
18 the search warrant --

19 Q. Okay.

20 A. -- seizure.

21 Q. Those included the videotapes depicting the
22 mujahideen battlefield scenes?

23 A. No, with those I questioned whether or not
24 those fell within the scope, because during the warrant,
25 we tried to review those videos, those particular -- the

1 mujahideen videos. And at the time I don't believe I
2 was certain whether or not those videos actually
3 pertained to Chechnya or not. I had an agent there that
4 actually spoke Russian, so we were trying to get him to
5 see if he could pick up on what those tapes were about.

6 Q. Did you discuss with Mr. Cardani the mujahideen
7 videos?

8 A. I believe I did.

9 Q. Do you have any notes of that conversation?

10 A. No, I do not.

11 Q. You took no notes during your conversation with
12 him about what it was he was authorizing or not
13 authorizing you to seize absent the consent?

14 A. I don't recall taking notes during that
15 conversation.

16 Q. Did you make any notes of those items that you
17 denied agents' requests to seize?

18 A. No, I don't believe I took notes pertaining to
19 which items.

20 Q. Are you able to give us today an accurate list
21 of the items that were denied?

22 A. I can give you a list by memory of what I
23 denied.

24 Q. Well --

25 A. That would include the military videos. There.

1 were boxes and boxes of military videos from the U.S.
2 Army. Let me think, I believe there was photographs,
3 lots and lots of photographs.

4 Q. Of what?

5 A. They looked like photographs of persons that
6 have come to the residence, a lot of tent photographs of
7 persons coming, that sort of thing.

8 Q. What other items do you recall today having
9 denied?

10 A. I believe there were some address books.

11 Q. What else?

12 A. I believe there was some Islamic materials.

13 Q. The paragraph 17 references Noble Qur'ans.

14 A. That's correct.

15 Q. Did you deny the permission to seize those?

16 A. Under the search warrant.

17 Q. What else?

18 A. Again, samples of literature would be some
19 Islamic materials. Yes, the prisoner letters. That's
20 all I can recall.

21 Q. How many different agents brought you items
22 that you denied?

23 A. I believe probably only two, which would be my
24 seizing officer and Special Agent Carroll.

25 Q. And the seizing officer, again, is named?

1 A. Special Agent Linda Czemerys.

2 Q. How many different times did you speak with
3 Mr. Cardani about the issue of items being within or
4 without the warrant?

5 A. Several times. I don't recall the exact
6 number.

7 Q. During the course of the search, numerous
8 computer or hard drives were seized, correct?

9 A. That's correct.

10 Q. Was any effort made to look at them on the
11 premises?

12 A. Our computer information specialist that was
13 present, we only had one, and once he realized the
14 number of computers there, then the determination was
15 made that it wasn't feasible to image them on-site.

16 Q. Who was the computer person present at the time
17 of the search?

18 A. Special Agent Richard Smith.

19 Q. That's an IRS agent?

20 A. Yes, he is.

21 Q. When you went to the location, did you have a
22 protocol in place for searching the computers?

23 A. The protocol basically is, I believe, listed in
24 Item B, items to be seized, which, I believe, states
25 that if it's not feasible to image them on-site, that we

1 would retain them up to 60 days, and then return them.

2 MR. WAX: Okay. We were provided a list of
3 search terms earlier this morning. Is this in evidence
4 or was this just provided to us?

5 MR. CARDANI: No, it's not. But I'll stipulate
6 to its admissibility, and tender to the court if that's
7 what you would like.

8 MR. WAX: Yeah. We'll label this SH-2 for the
9 hearing, if we may, Your Honor.

10 THE COURT: Fine, received.

11 MR. WAX: Does the court have a copy?

12 THE COURT: No.

13 MR. CARDANI: We have an extra copy.

14 MR. WAX: Thank you.

15 BY MR. WAX:

16 Q. When was the list of search terms that is
17 reflected on Exhibit Number 2 created?

18 A. Both lists were created after IRS personnel
19 were able to access a lot of the data that needed to be
20 recovered.

21 Q. After accessing the data on the computers
22 themselves?

23 A. After processing the data to make it available
24 for me to access, yes.

25 Q. On the computers themselves, you are talking

1 about?

2 A. No, on the images from the computers.

3 Q. You are not talking about accessing hard copies
4 of pieces of paper; you are talking about accessing the
5 images of the hard drives of the computers themselves?

6 A. Yes.

7 Q. Okay. Exhibit 2 has one page that has the
8 heading Search Terms. And then it has another page that
9 says DT Search Terms that goes 1 through 29. And then a
10 third page that picks up 61 to 73. Should there be
11 another page?

12 A. No, I believe that's the document.

13 Q. What happened to numbers 20 -- or 30 through
14 60?

15 MR. CARDANI: If I may, excuse me, Mr. Wax.
16 The copy did not pick up a page. I can give him a copy
17 of the items 30 through 60 that didn't appear on it and
18 I'll ask that a copy be made of that.

19 MR. WAX: Can we then substitute a complete one
20 later, Your Honor, for the partial one we just handed
21 up?

22 THE COURT: Just for clarity --

23 THE WITNESS: I have a complete one.

24 THE COURT: For clarity of the record, it will
25 be Number 2-A.

1 MR. CARDANI: May I approach the witness?

2 THE COURT: Yes.

3 MR. CARDANI: I don't know if the original one
4 has --

5 THE COURT: This one included Hawaii that I
6 got, this one.

7 MR. WAX: I think that's Hawali.

8 MR. CARDANI: Judge, may I inquire? The
9 exhibit itself, does it have a page with Number 30
10 through 60 on it?

11 THE COURT: I don't know. I passed it off
12 here. Go ahead and take a look at it, Mr. Cardani.

13 MR. CARDANI: It does not.

14 THE COURT: I don't have that. I just have two
15 pages. What does DT mean?

16 THE WITNESS: It's a DT search. It's actually
17 a program that the forensic people use where you can put
18 in terms and then it looks for the data.

19 THE COURT: Thank you.

20 MR. CARDANI: For purposes of this testimony,
21 though, she has a complete copy of the search terms and
22 Mr. Wax does as well.

23 MR. WAX: Thank you.

24 BY MR. WAX:

25 Q. Looking at the complete exhibit then, Agent

1 Anderson, we have one page labeled Search Terms without
2 numbers, and then three pages DT Search Terms that go 1
3 through 73. Were they created at different times?

4 A. Yes, they were.

5 Q. Please tell us which was created first.

6 A. No, I don't recall which one came before the
7 other one.

8 Q. Who created the first one, Search Terms?

9 A. I did.

10 Q. When?

11 A. After I received access to all of the data that
12 needed to be retrieved.

13 Q. Does that include after receiving access to the
14 images of the hard drives?

15 A. I can't recall if I had received the data prior
16 to making these lists. It may have been at the same
17 time that my computer specialist told me that the data
18 would be available and that he would be shipping it out
19 to me that I may have created these search terms.

20 Q. What about the list DT Search Terms?

21 A. Yes, the difference between the first list
22 Search Term and the DT Search Term is that the first
23 page is what I came up with originally on my own. And
24 the DT Search Term, I believe was a list that was
25 prepared after consulting with AUSA Cardani and Special

1 Agent Carroll.

2 Q. That was definitely after having had access to
3 the information that was on the imaged hard drives?

4 A. No, I don't know that -- again, as I stated, I
5 don't know -- I don't recall if this was done prior to
6 the data actually being shipped to me.

7 Q. I am confused. I thought you had told us
8 earlier that you did not create the search terms until
9 after you had access to the information that was on the
10 imaged hard drives.

11 A. No, I believe what I stated was that I'm not
12 sure if this was done in conjunction with the data being
13 shipped to me or if I had done it after having access to
14 it.

15 Q. Is there a report that would clarify that issue
16 for us?

17 A. I don't know.

18 Q. Do you have any log notes that would tell you
19 when you created the list called Search Terms?

20 A. I don't believe I have a log that says that.

21 Q. Do you have a log note that would say when you
22 created the list called DT Search Terms?

23 A. No.

24 Q. Do you have any notes of any type that would
25 shed light on when you created these two separate lists?

1 A. I don't know. I'd have to review my notes. I
2 don't know.

3 MR. WAX: Can we have that done and then
4 perhaps we would need to resume the hearing, Your Honor.

5 MR. CARDANI: Well --

6 THE COURT: I'm not going to interrupt the
7 hearing for that.

8 MR. WAX: I appreciate that.

9 MR. CARDANI: I'm not sure what the pertinence
10 of getting the best memory of the witness on how the
11 image -- unless it's important to the court, I'm not
12 sure how relevant it is.

13 THE COURT: What are you after?

14 MR. WAX: Excuse me?

15 THE COURT: What are you after?

16 MR. WAX: May I answer the question out of her
17 presence, please, and out of Agent Carroll's presence?

18 THE COURT: You may. We'll just go back into
19 this little room here.

20 Sorry, Deb.

21 MR. WAX: Thank you.

22 (An in camera discussion was held. Page 48 is
23 sealed, under separate cover.)

24 ///

25 ///

1 (Proceedings continued in open court.)

2 MR. CARDANI: Judge, can I proffer the court
3 SH-2-A, I guess, which is a complete listing of the
4 search terms we're talking about?

5 THE COURT: Yes. It will be received.

6 MR. WAX: Thank you.

7 BY MR. WAX:

8 Q. All right. Agent Anderson, with respect to the
9 search of the computers, where did they physically go
10 after they left the premises where they were seized?

11 A. They went to our Bend office where my CIS was
12 stationed.

13 Q. Who conducted the first search of the
14 computers?

15 A. Well, my CIS imaged them and processed them and
16 then began searching the computers.

17 Q. And the CIS to whom you are referring is whom?

18 A. Special Agent Richard Smith.

19 Q. In Bend?

20 A. Yes.

21 Q. Were copies of the images sent to any other
22 locations for any other searches?

23 A. Copies of the images were processed and
24 eventually sent to me once a great deal of work was done
25 to access the images so that I could do the DT search.

1 Q. Were copies of the images provided to the FBI?

2 A. The -- Special Agent Carroll was provided
3 copies of a couple of the drives.

4 Q. Which ones?

5 A. I don't recall.

6 Q. Is there a record of that somewhere?

7 A. I'm assuming he probably has a record of that.

8 Q. Do you have a record of which drives you gave
9 to him?

10 A. I don't know. I'd have to look.

11 Q. All right. When would the drives have been
12 given to him?

13 A. Copies or images of the drives?

14 Q. Yes.

15 A. Well, obviously after the search warrant; and
16 other than that, I can't speculate.

17 Q. In 2004?

18 A. I don't know.

19 Q. Is that the type of thing that will be
20 described in the forensic report that Mr. Cardani
21 indicated is in the process of preparation?

22 A. I don't -- I don't know.

23 Q. Were copies of the drives sent to Washington,
24 D.C.?

25 A. No -- well, yes, they were, because I have a

1 computer specialist in Washington, D.C. for the IRS.

2 Q. When were the copies sent to that person?

3 A. Copies -- I don't know. I'd have to check.

4 Q. Who is that person?

5 A. That person would be Jeremy Christianson.

6 Q. Were copies of the drives provided to any
7 people as far as you know other than Mr. Christianson,
8 Mr. Smith, and Agent Carroll?

9 MR. CARDANI: Judge, before she answers, I'm
10 going to object to the line of questioning. What's
11 important is the evidence we're trying to put in trial.
12 How it came into being, how we pulled it out of the
13 computers, and she is the witness that directed that
14 from beginning to end. If other copies were made, given
15 to other people that didn't result in any kind of
16 tendering of exhibits for trial, I don't see how it's
17 relevant to this hearing.

18 THE COURT: Can you connect it?

19 MR. WAX: Yes, Your Honor. We do not know at
20 this point from this witness the origin of these search
21 terms, whether they were derived or created by her at
22 any particular time and --

23 THE COURT: Why don't you ask her about that.

24 MR. WAX: -- who reviewed the information.

25 THE COURT: Ask her about that.

1 BY MR. WAX:

2 Q. If I understood you correctly earlier, you've
3 told us that you do not recall, as you sit here today,
4 when the list of search terms was created; is that
5 correct?

6 A. What I stated was that I was not sure if the
7 search terms were created prior to receiving the data or
8 after receiving the data from my CIS. However, I do
9 believe the search terms were created during the time
10 period that my CIS was processing the information and
11 sent it to me.

12 Q. When the CIS was processing the information,
13 were copies of the hard drives also at that point in
14 Washington, D.C.?

15 MR. CARDANI: Objection, relevance.

16 MR. WAX: It's directly relevant, Your Honor.
17 If there was something done there that led to --

18 THE COURT: Let me ask this: Where did -- did
19 you get any information from Washington, D.C. to help
20 you put together this list?

21 THE WITNESS: Of search terms?

22 THE COURT: Yes.

23 THE WITNESS: No.

24 THE COURT: The objection is sustained.

25 BY MR. WAX:

1 Q. What is ILook?

2 A. ILook is an IRS program for reviewing computer
3 data.

4 Q. What program was Mr. Smith using in Bend?

5 A. Well, I'm not a computer expert, but I'll give
6 you my understanding. My understanding is that
7 originally Mr. Smith was using something called SaveBack
8 in order to image the drives and process them. And
9 ILook, is my understanding, is an IRS proprietary type
10 of program. And I believe Special Agent Smith started
11 using one of the earlier versions of ILook.

12 However, because we were having problems with
13 retrieving some of the deleted data, the drives were
14 reformatted, there is a lot of things that had happened
15 to the drives, that the images were eventually sent to
16 my IRS specialist in Washington, D.C. who is an ILook
17 program manager, so he is very familiar with the
18 program. And that is when he was able to retrieve most
19 of the pertinent data.

20 Q. That retrieval information was provided to you?

21 A. That retrieval information was processed, put
22 into a laptop with the DT search function on it, and
23 these DT search terms were used to review the data.

24 Q. In Bend or in Washington?

25 A. What occurred in Bend or Washington?

1 Q. The review of the material with the DT search
2 terms.

3 A. In Medford, Oregon.

4 Q. In Medford?

5 A. Uh-huh.

6 Q. When the programmer did whatever he did in
7 Washington, were you provided with any information that
8 led to inclusion of any of the items in the list of DT
9 search terms?

10 A. Well, the process of using -- if you are
11 familiar with the program DT Search, it's a rolling
12 process. Basically you put in a search term and data
13 comes up. Correct? So then you review the data. And
14 within that data, if it's pertinent, you find other
15 possible relevant search terms that's used. This DT
16 Search Term list is not all inclusive.

17 Q. If I understand what you just said, you are
18 telling us that something was done in Washington, some
19 terms are rolled forward, they were then used which led
20 to the creation of other terms?

21 A. I'm not sure what you just said, but let me
22 state this: In Washington, he processed the
23 information, put it on a laptop, shipped it to me in
24 Medford. I had created, around that time period, the DT
25 search terms. Once I started searching the computer

1 based on my DT search terms, data was retrieved that led
2 me to other potential search terms that were relevant to
3 the warrant.

4 Q. Prior to your doing that, am I understanding
5 correctly that other persons, perhaps Mr. Smith, perhaps
6 Mr. Christianson, had looked at the data that was on the
7 hard drives?

8 A. Mr. Christianson, yes, had looked at some of
9 the data on the hard drives because prior to him
10 shipping me the laptop with the data on it, I had asked
11 him to run some search terms for me.

12 Q. Based on what list?

13 A. Based on the list that you have as the exhibit.

14 Q. Based on the list called Search Terms or based
15 on the list called DT Search Terms?

16 A. They would include probably both of them.

17 Q. Do you have any notes anywhere that would
18 answer the question as to what actual terms he had to
19 work from, Christianson?

20 A. I believe he has a list of those and I believe
21 that he will be putting those in his report.

22 Q. Did I understand you correctly to say that
23 there are other terms that have been employed that go
24 beyond --

25 A. Yes.

1 Q. -- those contained in Exhibit 2-A?

2 A. Yes.

3 Q. Do you have those in writing anywhere?

4 A. I do not believe I have those in writing. The
5 ones that I asked Mr. Christianson to run, I believe he
6 has those and will have those in his report.

7 Q. If I'm reading your July 6th affidavit
8 correctly, you are telling us in paragraph 17 that
9 videotapes depicting mujahideen were outside the scope
10 of the warrant?

11 MR. CARDANI: Judge, that calls for a legal
12 conclusion.

13 THE COURT: Sustained.

14 BY MR. WAX:

15 Q. Let me try again. I see the word mujahideen in
16 paragraph 17 of your affidavit. I see the word
17 mujahideen in paragraph 21 of your affidavit. In
18 paragraph 17, aren't you telling us that you viewed
19 videotapes -- you viewed videotapes of mujahideen as
20 being outside the scope of the warrant?

21 I'm asking the question, not Mr. Cardani. Can
22 you answer that question?

23 THE COURT: Come on, Mr. Wax, that wasn't
24 called for. I know you have a job to do here, but we're
25 not going to do that.

1 He's asking your opinion. Did you see it was
2 outside? That's not a legal opinion.

3 THE WITNESS: Yes. At the time I wasn't sure
4 if it fell within the scope or not. And I believe
5 that's what I stated prior to that. I wasn't sure
6 whether it fell within the scope or not. I couldn't
7 tell from the very poorly -- poor quality of the videos
8 exactly what I was seeing.

9 Again, I had an agent there that just happened
10 to speak Russian. We were trying to make sense out of
11 the video. But we're in the middle of a search, so I
12 didn't have time to go through the entire video.

13 BY MR. WAX:

14 Q. With respect to the search terms that are
15 contained in the DT list, for example, where did the
16 term Number 24, Hawali, come from? Why is that included
17 in the list?

18 A. Hawali?

19 Q. Yes.

20 A. I believe Mr. Hawali is the sheikh from Saudi
21 Arabia that was one of the mentors for Osama bin Laden.

22 Q. Did that name appear anywhere in anything that
23 you had seen with respect to Mr. Sedaghaty?

24 A. With respect to Mr. Sedaghaty?

25 Q. And the tax charges at issue in this case.

1 A. No. The name pertained to, again, Osama bin
2 Laden.

3 Q. Safar, where did that name or word come from?

4 A. Can you tell me what line that is?

5 Q. Number 25.

6 A. I believe Safar is the first name of another
7 sheikh named Qussaibi who, again, was another clerk that
8 Osama bin Laden utilized.

9 Q. Had you seen any information related to Safar
10 with reference to Mr. Sedaghaty prior to the search in
11 February of 2004?

12 A. No.

13 Q. Have you seen any information with respect to
14 Safar -- excuse me. Had either Mr. Christianson or
15 Mr. Smith or any other person who had looked at the
16 computers given you any information about Safar prior to
17 the computer searches that were conducted after February
18 of 2004?

19 A. Prior to --

20 Q. After.

21 A. Okay. I'm not sure I'm understanding your
22 question. Prior to the computer searches or are you
23 saying after?

24 Q. Let me try again. The name Safar, had that
25 come to your attention from any of the material, written

1 material, seized during the searches on February 13th?

2 A. No.

3 THE COURT: What was the number of the first
4 name you used?

5 MR. WAX: Hawali, Number 24.

6 THE COURT: Thank you.

7 BY MR. WAX:

8 Q. Had Safar --

9 THE COURT: I apologize. I misread it before.
10 That shows what a quick review does. You got me on that
11 one.

12 BY MR. WAX:

13 Q. Had Safar appeared in anything that had been
14 viewed by Mr. Christianson or Mr. Smith?

15 A. No, I don't believe so.

16 Q. Number 50 in the list, Sami, why does that
17 appear here?

18 A. Sami is the first name of Mr. al-Hussayen who
19 was the subject of an investigation out of Idaho in
20 which Mr. al-Buthe, who is the codefendant in this case,
21 had contacts with.

22 Q. Was -- what about 49, Korní?

23 A. Again, I believe that is a sheikh out of Saudi
24 Arabia that was associated with Osama bin Laden.

25 Q. You believe or you know?

1 A. I believe, that was my understanding.

2 Q. Okay. I'm assuming that as I go through the
3 affidavit, I have not missed either Sami or al-Hussayen
4 referenced anywhere in the affidavit that you filed in
5 support of the search warrant?

6 A. I do not believe he's referenced in the
7 affidavit, no.

8 Q. Nor is Korni?

9 A. No, he's not.

10 Q. In fact, most of these names are not referenced
11 anywhere in the affidavit that you filed in support of
12 the search warrant?

13 A. Several of them are not.

14 Q. Well, should we just go down the list or open
15 to page -- since I'm not -- let's just go back to the
16 beginning. On the list, Number 20, Salman?

17 A. Salman?

18 Q. It's not in the affidavit, is it?

19 A. That particular spelling, no, I don't believe.

20 Q. 21, Oadah?

21 A. Oadah, no, that is not in the affidavit.

22 Q. 22?

23 A. No.

24 Q. 24?

25 A. No.

1 Q. 25?

2 A. No.

3 Q. 26?

4 A. No.

5 Q. 27?

6 A. No.

7 Q. 28?

8 A. Nope.

9 Q. 29?

10 A. Nope.

11 Q. Looking down from 30 through 60, are there any
12 in the list 30 through 60 that are included in the
13 affidavit filed in support of the search warrant?

14 A. Yes. Starting on Number 53, Aquil; 54, Aqueel;
15 55, Aqeel; 56, Mansour; 57, Al Kadi; 58, Kadi; 59, Al
16 Qadi; and 60, Qadi.

17 Q. Are in the affidavit in support of the search
18 warrant?

19 A. Yes, they are.

20 Q. Could you help me out. I'm not finding --

21 A. It refers to --

22 Q. -- the Kadi's?

23 A. No problem. First of all, Number 53 down,
24 Aquil, refers to Aqeel Aqeel --

25 Q. I understand, 53, 54, and 55, Aquil.

1 A. And 57 is Al Kadi, who is the vice president of
2 al-Haramain.

3 Q. I see. Thank you. On page 17 -- or page 5.
4 Thank you.

5 A. Uh-huh.

6 Q. All right.

7 THE COURT: Does anyone need a health break?

8 THE WITNESS: I'm fine. Thank you.

9 MR. CARDANI: We're okay, Your Honor, thank you
10 for asking.

11 MR. WAX: Fine.

12 THE COURT: Okay.

13 MR. WAX: Could I have a moment, please?

14 THE COURT: Uh-huh.

15 (Discussion held off the record between Mr. Wax
16 and Mr. Matasar.)

17 BY MR. WAX:

18 Q. Ms. Anderson, I'd like to take you back, if I
19 could, to the issues related to the inception of the
20 effort to obtain a search warrant.

21 A. Okay.

22 Q. Who participated in discussions about searching
23 the premises that were subject to the search at issue
24 here?

25 A. Prior to the search warrant?

1 Q. That's correct.

2 A. AUSA Cardani and myself. It's possible Special
3 Agent Carroll. I can't recall, though.

4 Q. Did you have any discussions within the IRS
5 with any of your supervisors about whether a search
6 should be undertaken or not?

7 A. Whether the search warrant should be
8 undertaken?

9 Q. Correct.

10 A. Yes, the search warrant was reviewed by my IRS
11 supervisors.

12 Q. Prior to its preparation, was there any
13 discussion about whether you should actually go forward
14 and seek a search warrant?

15 A. I don't specifically recall a discussion on
16 whether or not we should go forward and seek the search
17 warrant. I believe that once the decision was made that
18 we should, -- with AUSA Cardani and myself -- start
19 drafting a search warrant affidavit, that it was
20 approved.

21 Q. By whom?

22 A. It's generally reviewed by my first level
23 manager and our in-house counsel. And I'm not sure if
24 the special agent in charge reviews it or not.

25 Q. Okay. Who was the in-house counsel? Who is

1 the first level supervisor?

2 MR. CARDANI: Object, relevance.

3 THE COURT: What is the relevance, Counsel?

4 MR. WAX: On the *Murray* issue, Your Honor.

5 THE COURT: You can give the names.

6 MR. CARDANI: Judge, may I be heard?

7 THE COURT: Yes.

8 MR. CARDANI: What was the ruling on the
9 objection?

10 THE COURT: Overruled.

11 MR. CARDANI: If I might, if he is getting
12 into -- the *Murray* issue has to do with the knowledge
13 of --

14 THE COURT: I realize that, but I'm going to --
15 I'll require her to give the names.

16 MR. CARDANI: Okay. Very well.

17 THE WITNESS: My direct supervisor --

18 THE COURT: Or recklessness.

19 MR. CARDANI: Burden, Your Honor.

20 THE COURT: Okay. Go ahead.

21 THE WITNESS: My direct supervisor at the time
22 was SSA Linda Enders. And counsel, I believe, was
23 Cassandra -- I can't remember her last name.

24 BY MR. WAX:

25 Q. Where was she located?

1 A. I believe she's located out of Seattle.

2 Actually, I'm sorry, I believe she's located in
3 Portland.

4 Q. Let me then take you back three years to 2001,
5 the inception of the investigation. Were you given
6 directions by anyone with respect to undertaking
7 investigation of Mr. Sedaghaty, al-Haramain, al-Buthe?

8 A. Given directions in what sense?

9 Q. By anyone in authority in the IRS about opening
10 an investigation of Mr. Sedaghaty, Mr. Al-Buthe, or
11 al-Haramain USA?

12 A. Well, the process with the IRS is, I believe
13 the United States Attorney's Office requested that an
14 IRS agent be assigned to assist in reviewing the
15 financial materials in the investigation. I believe my
16 first line supervisor, SSA Linda Enders, asked if I was
17 available to do so.

18 Q. So your understanding is that the -- your
19 involvement came at the request of the United States
20 Attorney's Office here in Oregon?

21 A. I believe so.

22 Q. With respect to the involvement of the FBI,
23 when did you and the FBI begin your work together?

24 A. We began our work together when I initiated my
25 investigation.

1 Q. (Indicating.)

2 A. When I initiated my investigation.

3 Q. When was that?

4 A. Early 2002.

5 Q. Do you have any notes that would give you a
6 specific date?

7 A. I believe that there is a request letter from
8 the U.S. Attorney's Office, that's generally how it
9 occurs, that requests my assistance.

10 Q. Did you have any participation in the service
11 of subpoenas with respect to al-Haramain or
12 Mr. Sedaghaty in 2001?

13 A. 2001? No.

14 Q. So anything that took place prior to 2002 would
15 have been FBI or some other agency?

16 A. It would have been FBI is my understanding,
17 yes.

18 MR. WAX: Excuse me, please, Your Honor.

19 THE COURT: Sure.

20 (Discussion held off the record between Mr. Wax
21 and Mr. Matasar.)

22 MR. WAX: Thank you. I have no further
23 questions.

24 THE COURT: Thank you.

25 Redirect.

1 REDIRECT EXAMINATION

2 BY MR. CARDANI:

3 Q. Special Agent Anderson, let me just go back for
4 a few minutes of testimony to shore up some things that
5 you said on cross. Are you a lawyer?

6 A. No, I'm not.

7 Q. So when you were asked questions by Mr. Wax
8 about whether something was within the scope of the
9 warrant, who did you consult with for -- for some help
10 on that?

11 A. I consulted AUSA Christopher Cardani.

12 Q. That would be me?

13 A. Yes.

14 Q. All right. But before that, did you have a
15 copy of the warrant and the affidavit with you on the
16 site itself?

17 A. Yes, I did.

18 Q. Did you use your information that you knew
19 about, your legal permission to be there, the warrant
20 and the affidavit, to help make a decision on scope
21 issues?

22 A. Yes, I did.

23 Q. All right. And did you make some of those
24 decisions yourself based on your understanding of the
25 case?

1 A. Yes.

2 Q. And then you also sought some legal counsel as
3 well?

4 A. Yes.

5 Q. And based on the legal counsel, you ended up
6 presenting a request for consent to Jonah Sedaghaty?

7 A. Yes.

8 Q. And that was done in the presence of his
9 lawyer, Mr. Berger?

10 A. Yes.

11 Q. And was it your understanding Mr. Berger
12 represented or at least purported to represent
13 al-Haramain to some extent as well?

14 A. Yes.

15 Q. He was given a copy of the warrant?

16 A. He was given a copy of the warrant and the
17 affidavit.

18 Q. And the list of the items to be seized?

19 A. And a list of items to be seized, yes.

20 Q. The videos, I just want to clarify something.
21 Were there a lot of videos found on the premises?

22 A. There was a lot of videos on the premises.

23 Q. What's a lot?

24 A. Boxes of videos, boxes, yeah, just boxes.

25 Q. Did you have time to put every one of them in

1 the TV and review them?

2 A. No.

3 Q. So is there a difference in your mind between
4 the videos found on the premises between ones depicting
5 mujahideen battles in Chechnya and this U.S. history --
6 U.S. Army videos that you mentioned, was there a
7 difference at the site in your mind between those two
8 categories?

9 A. Yes, there was a difference. The military
10 videos, I did not feel fell within the scope. And I
11 questioned the -- what appears to be the mujahideen
12 videos.

13 Q. Now, if you knew that some of those videos
14 contained battlefield scenes of mujahideen participating
15 in battles against Russian forces in Chechnya, would
16 that influence your decision on scope, whether something
17 was within the scope of the warrant on the site?

18 A. Yes.

19 Q. How so?

20 A. Well, when I reviewed -- what I saw of the
21 video was nothing more than tanks and military equipment
22 that had -- appeared to have been blown up or something
23 of that nature, I don't recall specifically seeing
24 anything that completely identified them as being
25 Chechnyan mujahideen.

1 Q. And if you did, would that have affected your
2 decision on scope?

3 A. Chechnyan mujahideen?

4 Q. Yes.

5 A. Yes.

6 Q. Why?

7 A. Because it's part of the affidavit.

8 Q. So you felt the affidavit was part of your
9 direction as to scope?

10 A. Yes.

11 Q. Mr. Wax asked you about the Noble Qur'an. Are
12 you familiar with that version of the Qur'an?

13 A. Yes.

14 Q. And you found -- or agents found several copies
15 of those on-site?

16 A. Yes.

17 Q. Now, did you read the entire thing before
18 making decisions on whether those might be within the
19 scope or not?

20 A. Did I read the entire Qur'an?

21 Q. Yes.

22 A. No.

23 Q. If you knew on-site that there was an appendix
24 called A Call to Jihad, basically imploring people to go
25 fight for a jihad, would that have affected your

1 decision on scope on-site?

2 A. Yes.

3 Q. Why?

4 A. Because jihad is mentioned in the affidavit.

5 Q. And these videos that we're talking about
6 depicting mujahideen battlefield scenes and the Noble
7 Qur'ans, these were items that were covered by the
8 consent search?

9 A. Yes, they were.

10 Q. And there'll be a legal determination on
11 others, but you felt you could take them because of the
12 consent?

13 A. That's correct.

14 Q. Moving to the computers. You touched upon
15 this, but was there some delay between the time when you
16 sent the imaged devices, first Rick Smith had them and
17 then Mr. Christianson in D.C., about how long, if you
18 recall, was it before you got a searchable product in
19 that computer?

20 A. It was several years. Again, the investigation
21 slowed down once Mr. Sedaghaty hadn't returned to the
22 United States.

23 Q. Was also -- this several year delay, was part
24 of that the technical limitations or technical
25 difficulties encountered in searching these computers?

1 A. Yes. It's my understanding there was a
2 definite difference in the programs that were used early
3 on and the newer program that came out.

4 Q. You mentioned that there was deleted material
5 on the computers?

6 A. Yes.

7 Q. Did that -- some of that stuff has been
8 resurrected in searchable form for you?

9 A. Yes. In fact, that's where a majority of the
10 relevant information came from.

11 Q. So most of the usable -- relevant information
12 that we'll be seeking to use at trial came out of
13 information that had been deleted from the computers?

14 A. Yes, I believe so.

15 Q. And that through forensic analysis, agents were
16 able to resurrect and allow you to search?

17 A. Correct.

18 Q. So when we talk search terms here, that's my
19 next topic of questioning, it's mostly the deleted
20 material that someone had hit delete, delete, delete
21 before you got there in February of 2004, that was
22 resurrected, and it was to that that you applied the
23 search term analysis?

24 A. Yes. I am not a computer expert, but my
25 understanding is there was ways that files get deleted,

1 and my understanding is that a majority of the pertinent
2 information came from the deleted files.

3 Q. So now, the last area I want to ask you about
4 are these search terms. If the search terms weren't
5 mentioned verbatim in your affidavit, did you feel,
6 nevertheless, that some of these search terms that
7 Mr. Wax went over with you were reasonably related to
8 the investigation as depicted in your affidavit?

9 A. Yes.

10 Q. So this was during this period of time a
11 question of whether funding was used to promote acts of
12 terrorism; is that right?

13 A. Correct.

14 Q. So if you -- and the Chechnyan mujahideen
15 that's described in your affidavit, when you created
16 search terms like the ones mentioned by Mr. Wax, did you
17 feel, based on the information in the affidavit, that
18 those were within the reasonable context of the
19 investigation?

20 A. Yes.

21 Q. Did you use the affidavit and the information
22 contained or summarized there, in addition to your
23 larger investigation, in creating these search terms?

24 A. Yes.

25 Q. Was that an evolving process?

1 A. Yes, it was evolving. Like I said, I'd use one
2 of the search terms, some information would come up, I
3 would learn about something I hadn't known before but
4 was obviously relevant to the tax charges, and would use
5 new search terms to pull up the newly relevant
6 information.

7 Q. Do you have any examples of that?

8 A. Yes. For instance, Qoqaz, which is mentioned
9 in the search warrant affidavit is a Web site in which
10 al-Haramain Islamic Foundation Web site had a link.

11 Qoqaz, I believe, was a part of the Azzam
12 Publications. And on that Web site, it discussed in
13 detail the Chechnyan mujahideen, their battles, funding.
14 They had all kinds of information about interviews with
15 mujahideen commanders and things of that nature.

16 While using the Qoqaz search term, which was
17 relevant, there came up information pertaining to an
18 individual named -- that was later identified as
19 Radmilla Balobina, who it was my understanding was one
20 of Mr. Sedaghaty's wives at the time. And while looking
21 through those materials, it appears that Radmilla -- she
22 went by -- what do I want to call it? An e-mail name of
23 Ptichka, which is Russian for "little bird" is my
24 understanding.

25 In these Ptichka e-mails, it talked about

1 Qoqaz. In fact, it talked about actually translating
2 some of the Qoqaz material into Russian for a Russian
3 Qoqaz Web site. And so through that process, it became
4 obvious to me that Ptichka, also known as Radmilla, was
5 relevant to the investigation.

6 Q. Now, we're all in a new world in terms of
7 computers and the amount of information that can be
8 stored on them, but I'd just like to ask you something.
9 Go back to the days -- you've been an investigator for
10 how long?

11 A. Almost 14 years in December.

12 Q. Going back to some of your earlier experiences,
13 have you participated in white collar search warrants in
14 which large amounts of paper material was on-site, file
15 cabinets and boxes and stuff?

16 A. Yes.

17 Q. In attempting to determine what was in the
18 proper context of the warrant or the affidavit, have you
19 ever had experiences where you start reviewing something
20 on-site and not think it was pertinent, put it aside,
21 and then learn something else during your search that
22 made some of that discarded material potentially
23 relevant and cause you to change your mind on scope?

24 A. Yes.

25 Q. Why is that?

1 A. Why is that? Well, as you are going through
2 the documents, and you find documents pertinent to the
3 warrant, you find information pertaining to the crime
4 that you didn't have before, and, therefore, the new
5 information becomes relevant.

6 Q. And that's sort of like what happened to the
7 computers here?

8 A. Yes.

9 Q. So these search terms may have not been part of
10 an initial search, but as your understanding of the
11 contents of the computer became clearer, you came up
12 with new search terms?

13 A. That's correct.

14 Q. And did you also rely on other parts of the
15 investigation and talking to people that know a little
16 bit more about these subjects, did that also cause you
17 to create new search terms?

18 A. Yes.

19 MR. CARDANI: If I may have a moment, Your
20 Honor?

21 THE COURT: Yes.

22 (Discussion held off the record between
23 Mr. Gorder and Mr. Cardani.)

24 MR. CARDANI: That's all I have. Thank you.

25 MR. WAX: Your Honor, may I go into some of

1 these areas?

2 THE COURT: Sure.

3 MR. WAX: Thank you.

4 RECROSS-EXAMINATION

5 BY MR. WAX:

6 Q. Ms. Anderson, I'd like you to please take a
7 look at the Attachment B. Do you have a copy in front
8 of you?

9 A. I believe I do.

10 Q. Okay. Attachment B starts out by listing five
11 individuals the magistrate judge identified as being
12 associated with the violations, correct?

13 A. Correct.

14 Q. So giving authorization to obtain information
15 with respect to these five people that's in the warrant
16 itself, correct?

17 A. Yes. That's part of the authorization, yes.

18 Q. Next, entities associated with the violations,
19 the word "al-Haramain" appears in each of the five in
20 different variations, correct?

21 A. Correct.

22 Q. But there are no other entities listed here
23 either, correct?

24 A. Correct.

25 Q. Now, evidence relating to the tax violations,

1 you've referenced the affidavit.

2 A. Uh-huh.

3 Q. I'd like you to read the last four words of
4 that paragraph that follow the reference to the
5 affidavit.

6 A. I'm sorry, you lost me. On what?

7 Q. Paragraph that says "evidence relating to the
8 tax violation."

9 A. Okay.

10 Q. The first paragraph --

11 A. Yes.

12 Q. -- evidence concerning description.

13 A. Uh-huh.

14 Q. The last four words are what?

15 A. "Limited to the following."

16 Q. You clearly had this in front of you when you
17 conducted the search in February?

18 A. Yes.

19 Q. And this was still in effect when the computer
20 searches were conducted later, the computer searches
21 that are, in fact, still ongoing?

22 A. Yes, that's correct.

23 Q. So the limitation was put upon you by the
24 issuing court, correct?

25 A. I believe so.

1 Q. Now, that limitation then told you that you
2 could obtain records and communications?

3 A. Uh-huh.

4 Q. Including electronic records and communications
5 involving the individuals or entities above, correct?

6 A. Correct.

7 Q. And those individuals or entities do not
8 include people such as Sami al-Hussayen?

9 A. I'm sorry, Mr. Wax, it says "including
10 electronic records and communications involving
11 individuals or entities above."

12 Q. Right.

13 A. I don't believe it says it excludes anything
14 else.

15 Q. The affidavit on its face listed five
16 individuals, correct?

17 A. Correct.

18 Q. And it listed five entities?

19 A. Correct.

20 Q. And then this paragraph told you that you could
21 obtain records and communications involving the
22 individuals or entities above?

23 A. Involving them, yes.

24 Q. Okay. And the next clause "individuals or
25 entities above pertaining to the preparation of an IRS

1 form," correct?

2 A. Correct.

3 Q. Do you see those words there?

4 A. Yeah.

5 Q. Now, for example, a communication between
6 Mr. Sedaghaty and Mr. Wilcox contained on a computer in
7 an e-mail, that would be a communication pertaining to
8 the preparation of the IRS form?

9 A. Communication between Mr. Sedaghaty and
10 Mr. Wilcox --

11 Q. Yes.

12 A. -- one of the accountants, yes.

13 Q. Yes.

14 A. Yes.

15 Q. A communication between Mr. Sedaghaty and an
16 accountant in Saudi Arabia, al-Haramain Saudi Arabia,
17 that would pertain to the preparation of the form?

18 A. It would pertain to items that would go into
19 the preparation of the form, yes.

20 Q. Okay. With respect to the list of search
21 terms, I don't see, for example, the term QuickBooks in
22 your list of search terms.

23 A. No, that's not on there.

24 Q. I don't see the term Wilcox. I see the name
25 Tom. I don't see Wilcox.

1 A. Wilcox would have been one of my search terms
2 that would have evolved. Tom is his first name. And I
3 believe from reviewing the records that Pete referred to
4 him as Tom, so that came up more often than not.

5 Q. You knew prior to February --

6 THE COURT: You should refer to the defendant
7 as the defendant, not by his first name.

8 THE WITNESS: Oh, right.

9 BY MR. WAX:

10 Q. You knew prior to the search that the
11 accountant's full name was Tom or Thomas Wilcox?

12 A. Uh-huh.

13 Q. You had seen documents with the name Wilcox on
14 them?

15 A. I have seen documents with Wilcox on it, yes.

16 Q. The next paragraph of the warrant itself
17 authorizes the search for and seizure of records
18 relating to, and then it lists a number of things,
19 correct?

20 A. Yes.

21 Q. And nowhere in that list does it mention, for
22 example, Sami al-Hussayen?

23 A. No, it does not.

24 Q. Same with the next paragraph, records relating
25 to credit card accounts, records and transactions

1 involving the year 2000?

2 A. I'm sorry, was that a question?

3 Q. That paragraph, again, makes no reference to
4 anyone or any entity other than those people and
5 entities listed in the warrant itself?

6 A. Yes.

7 Q. Correct?

8 A. That's correct.

9 Q. Turning to the bottom of the next page with
10 respect to computers --

11 THE COURT: Counsel, I've read the affidavit.
12 This is mostly argument, isn't it?

13 MR. WAX: Perhaps it is, Your Honor. I think
14 that it directly refutes the suggestion that Mr. Cardani
15 was raising.

16 THE COURT: Sure, I understand that.

17 MR. WAX: Thank you.

18 THE COURT: And I don't -- I don't question
19 your enthusiastic efforts.

20 MR. MATASAR: We're good, we're good.

21 MR. WAX: Thank you.

22 THE COURT: Okay.

23 MR. WAX: One more moment, please.

24 (Discussion held off the record between Mr. Wax
25 and Mr. Matasar.)

1 MR. WAX: I have no further questions.

2 MR. CARDANI: Just real brief follow-up. I
3 think we're just about done.

4 THE COURT: It's hard not to be last, isn't it?

5 REDIRECT EXAMINATION

6 BY MR. CARDANI:

7 Q. Are you familiar, as an IRS agent, with the
8 term "willfulness"?

9 A. Yes, I am.

10 Q. What is your understanding of the term
11 "willfulness"?

12 A. Willfulness is an element of tax violation,
13 specifically Title 26:7206(1), filing a false return.

14 Q. And is willfulness an element of the crime that
15 you described in your affidavit for Judge Cooney?

16 MR. WAX: Judge, I'm going to object for the
17 same reason that you --

18 THE COURT: Okay. We'll apply the goose and
19 the gander rule.

20 MR. CARDANI: Fair enough. One last thing
21 then, this hasn't been asked.

22 MR. MATASAR: Where's my evidence code?

23 BY MR. CARDANI:

24 Q. Did you seek to obtain or any other agents
25 obtain another search warrant for the contents of these

1 computers or the computer media after you got the
2 material back?

3 A. Yes, I did. After reviewing disks and CDs with
4 Special Agent Richard Smith, it became apparent that
5 there was some form of child pornography on one of the
6 disks in which I noted that we needed to contact you
7 regarding this to find out what to do with it.

8 Q. And what was done?

9 A. After contacting you, a special agent from the
10 FBI went ahead and drafted an affidavit for search
11 warrant, got a search warrant for the contents on that
12 disk.

13 MR. CARDANI: Okay. That's all I have.

14 MR. WAX: One question, please.

15 RECROSS-EXAMINATION

16 BY MR. WAX:

17 Q. If I understand the discovery correctly, it is
18 your belief that that disk was not related to my client;
19 is that correct?

20 A. It's my understanding that disk was in the --
21 the disks that were taken from the al-Haramain search
22 warrant. I don't know if it's related to your client or
23 not.

24 Q. I thought I saw somewhere that the government
25 believed that it was not related to Mr. Sedaghaty.

1 A. I don't recall seeing that.

2 MR. WAX: Nothing further.

3 THE COURT: All right. Thank you. You may
4 step down.

5 THE WITNESS: Thank you.

6 MR. CARDANI: Judge, we have no more witnesses
7 to present to the court on this, just argument, which
8 there is plenty of.

9 MR. WAX: Your Honor, we would seek to call FBI
10 Agent Carroll with respect to the piece of the search
11 consent issue and to the *Murray* issue.

12 MR. CARDANI: No objection as to the first two
13 categories. The third may be somewhat problematic.

14 THE COURT: All right. Go ahead.

15 (The witness was sworn.)

16 THE CLERK: Thank you. Please take the witness
17 stand. Agent, would you please state your full name for
18 the record, spelling your last name.

19 THE WITNESS: Certainly. David A. Carroll.
20 C-A-R-R-O-L-L.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. WAX:

24 Q. Mr. Carroll, you've been employed with the FBI
25 for how long?

1 A. Since 1987.

2 Q. You are currently located where?

3 A. In the Medford resident agency.

4 Q. Were you present at the search of the premises
5 under discussion in this case in February of 2004?

6 A. Yes, I was.

7 Q. Can you describe, please, the role that you
8 played at the inception of the search. And in
9 particular were you part of the entry team?

10 A. Not the initial entry team, no.

11 Q. Were you present and/or were you able to see
12 what took place between the agents who first encountered
13 Jonah Sedaghaty?

14 A. I have a general recollection, yes.

15 Q. Please give us that.

16 A. If I recall correctly, Mr. Sedaghaty, Jonah,
17 had come out of the lower level of the building. If --
18 as Ms. Anderson described for you, the driveway goes up
19 to the upper level, there is also a drive into the
20 garage area where Jonah came out of.

21 It's my recollection he was directed to go up
22 to speak with Ms. Anderson -- Mrs. Anderson. And then
23 the initial entry team proceeded to go inside the house.

24 Q. Did you see whether Mr. Sedaghaty was taken
25 into the house by the initial entry team?

1 A. I don't recall that.

2 Q. Do you recall seeing him in the presence in a
3 custodial way of agents at any time that day?

4 A. No.

5 Q. Did you actually see him move from the lower
6 area up to the upper area where Agent Anderson was
7 located?

8 A. No, no, I did not.

9 Q. Were you armed that day?

10 A. Yes.

11 Q. Did you have your firearm drawn at any point?

12 A. No.

13 Q. Did you see any agents with firearms drawn at
14 any point?

15 A. I think the initial entry team may have had
16 their guns in their hands at the time they made entry.

17 Q. Do you recall whether they had their guns in
18 their hands at the time they first encountered Jonah
19 Sedaghaty?

20 A. I can't say. I don't recall.

21 Q. With respect to the computers in this case, if
22 I understood Agent Anderson correctly, she indicated
23 that you were provided copies of some of the mirrors of
24 some of the hard drives?

25 A. Correct.

1 Q. Do you recall how many and/or which ones?

2 A. I want to say they were referred to as images,
3 Seda 6, 7 and 8, I believe.

4 Q. Do you recall when you obtained them?

5 A. No, I don't recall a specific time.

6 Q. Do you have any notes or records that would
7 clarify that issue?

8 A. No, I don't.

9 Q. None?

10 A. Maybe a receipt that I had -- had prepared upon
11 receiving them from Mrs. Anderson. They weren't direct
12 evidence, so they were -- they were working copies, so
13 it wasn't as if I had to maintain a chain of custody on
14 them.

15 Q. Could you check your records and let us know
16 after today whether you do have any receipt or other
17 records that would show when you obtained them?

18 A. I can check.

19 Q. Thank you.

20 A. Uh-huh. If you'll allow me to make a note.

21 Q. Thank you. What did you do with the copies of
22 the images that you received?

23 A. I believe I forwarded them to what's referred
24 to as the RCFL, the NWRCL. I don't know if you're
25 familiar with that with the cases that you handle in

1 Portland. But it's Northwest Computer Regional (sic)
2 Forensic Lab that the FBI is -- sponsors and operates
3 with other local and state law enforcement agencies.

4 Q. Did you ask that anything be done with them?

5 A. I asked that they be loaded onto a computer so
6 that I could review them.

7 Q. Did that happen?

8 A. Yes.

9 Q. Did you conduct your review?

10 A. Limited.

11 Q. Do you know whether the copies were reviewed by
12 any other law enforcement personnel?

13 A. I had a couple of analysts at one point in time
14 come down and review them, but it was a very temporary
15 thing. It was kind of a catch-us-can basis, but that's
16 about it.

17 Q. Do you know whether any other copies were made
18 and sent to any other location?

19 A. Later, yes.

20 Q. When did that occur?

21 A. Most recently, copies of those hard drives were
22 provided to the Russian FSB.

23 Q. Prior to that happening, were they reviewed by
24 any other entity or branch of the FBI in Oregon or
25 Washington or elsewhere in this country?

1 A. You know, I've been thinking about it, and I
2 cannot remember if I had sent them back to our
3 headquarters to be reviewed by, you know, our
4 headquarters lab back there, I can't recall.

5 Q. Would you have any notes or records that would
6 enable you to refresh your recollection on that?

7 A. You know, I could check, but I don't -- I'll do
8 that as well. I can't -- what I'm saying is I can't
9 specifically recall if I did that because I was working
10 in conjunction with the IRS and Mrs. Anderson, and I was
11 relying on searches that were being done through them as
12 well.

13 Q. Your particular assignment within the FBI back
14 in 2001, was what?

15 A. Give me a second. I was working as a street
16 agent in the Medford resident agency, working everything
17 from bank robberies to fugitives to violent gangs to,
18 you know, you name it, a wide breadth of federal
19 violations.

20 Q. Have you had any particular assignments with
21 respect to terrorism matters?

22 A. Prior to this, no.

23 Q. Prior to this, which "this"?

24 A. This case.

25 Q. Okay. Have you had any assignments to any

1 terrorism task forces?

2 A. Under -- this case relating to Mr. Sedaghaty
3 falls under the auspices of the Joint Terrorism Task
4 Force within the Portland Division of the FBI.

5 Q. And are you a participant or member of that
6 group or unit?

7 A. On a part-time basis, yes, because you have to
8 understand I still work other cases as well, outside of
9 the terrorism realm.

10 Q. If I understood correctly, Agent Anderson said
11 that she became involved with investigation of
12 Mr. Sedaghaty and/or al-Haramain sometime in 2002.
13 We've seen subpoenas that were issued in 2001.

14 Were you involved in the investigation of
15 either Mr. Sedaghaty or al-Haramain in 2001?

16 MR. CARDANI: Judge, I object to relevance.

17 THE COURT: Sustained.

18 MR. WAX: Again, Judge, I think this goes to
19 the *Murray* issue.

20 THE COURT: I disagree.

21 MR. WAX: Then I have no further questions,
22 Your Honor.

23 THE COURT: Thank you.

24 MR. CARDANI: No questions.

25 THE COURT: You may step down.

1 MR. WAX: Oh, excuse me, Judge --

2 THE COURT: Are you going to ask about consent?

3 MR. WAX: No, going back to the computers.

4 THE COURT: All right. Go ahead.

5 BY MR. WAX:

6 Q. Did you participate in preparation of any lists
7 of search terms for any searches of the computers by
8 either FBI or IRS personnel?

9 A. I recall contributing some names to that list.

10 Q. Do you recall when that occurred?

11 A. No.

12 Q. Would there be any written record of that?

13 A. Not that I'm aware of.

14 Q. Do you recall whether it occurred before the
15 physical seizure of the computers during the execution
16 of the warrant or at some time later on?

17 A. It would have been after the execution of the
18 warrant.

19 Q. Do you recall whether it occurred before any
20 review had been made of the computers by any personnel
21 or only after an initial review?

22 A. I couldn't specifically recall.

23 Q. The names that you believe you contributed to
24 the search terms, do you recall what they were?

25 A. The only one that comes to my mind specifically

1 relates to Timimi.

2 Q. Where would that name have come from in terms
3 of your contribution of it to this case?

4 A. I can't answer that question based on the fact
5 that it's related to material that can't be discussed in
6 this courtroom at this time.

7 MR. CARDANI: Judge, we're into this area now
8 where I don't mind him answering any of this but he's
9 not allowed to because it involves classified
10 information.

11 THE COURT: Okay.

12 BY MR. WAX:

13 Q. Let me see if I can ask some questions that
14 don't go into that area.

15 If I recall correctly, I don't see the name
16 al-Timimi in the affidavit prepared by Agent Anderson.

17 A. You have me at a loss, because I don't have the
18 affidavit in front of me, but I'll take your word for
19 it.

20 Q. Do you recall if you had reviewed any of the
21 hard copies of items that were seized under this search
22 warrant and come across the name al-Timimi prior to your
23 providing that name as a search term? I ask that
24 question again because -- well, do you recall that?

25 A. No, I don't recall.

1 MR. WAX: I have nothing that I could ask in
2 this forum then.

3 THE COURT: Fine. Mr. Cardani?

4 MR. CARDANI: No questions.

5 THE COURT: You may step down.

6 THE WITNESS: Thank you.

7 THE COURT: Counsel, do you wish to add
8 anything to your written arguments?

9 MR. CARDANI: Judge, the burden is on me on
10 consent and I'm prepared to talk about that if the court
11 has any questions. But the burden is on them on all
12 other matters, and I don't know who goes first on this.

13 THE COURT: Do you have any additional argument
14 to your written contributions?

15 MR. WAX: We believe, Judge, that before you
16 can rule on any of the aspects of the motion to
17 suppress, it would first be necessary to rule on the
18 CIPA issue and whether we're going to be able to get
19 into the classified material that we believe is relevant
20 to the *Murray* and *Franks* aspects of the case.

21 THE COURT: I understand that to be your
22 position. I, frankly, haven't decided that yet. I'm
23 going to look at this again. And this will take one of
24 two forms. Either I'll decide that we ought to get some
25 clarity with regard to what we have already, then issue

1 an order, and allow you, if there are other information
2 developed or depending on my other rulings, to ask to
3 reconsider on certain issues; or I'll delay this.

4 There's a part of me, frankly -- I haven't done
5 this a couple of years like you all -- that says I ought
6 to decide what is fresh in my mind now rather than hold
7 on to it, but I just haven't decided this yet.

8 MR. WAX: The other point, Judge, is that the
9 forensic report may well shed some light on some of the
10 issues that we're raising with respect to the scope of
11 the search, particularly the computer scope.

12 THE COURT: Right. And I understand that is
13 your position. And I would have the same comments that
14 I just had. All right.

15 MR. WAX: Other than that, I think that the
16 reply that we were able to get in on Friday to the
17 government's response sets out the legal aspect of the
18 issue that we were discussing with Ms. Anderson on which
19 the goose-and-gander rule was invoked. And --

20 THE COURT: I did that in a Medford civil trial
21 one time. This was a case in which there was a young
22 lawyer trying the case for the defendant and an older
23 lawyer sitting with him. And he kept telling this young
24 lawyer to stand up and make a certain objection, which I
25 denied every time, and because that older lawyer just

1 before had been doing the same thing to the other side.

2 So finally the older lawyer said something to
3 the young man, and could I have a bench conference?
4 Sure. They came on up. And the older lawyer started
5 arguing, on what basis is this ruling -- you know, what
6 is the basis of the ruling? I said, it's the goose-and-
7 gander rule.

8 This gave me a chance to use it a second time.
9 The other time was decades ago. But I'll keep it in my
10 arsenal, if necessary.

11 MR. WAX: We just urge you to read the four
12 corners of the warrant with care.

13 THE COURT: Sure.

14 MR. WAX: And we believe that it supports the
15 issues that we presented. We don't have anything to
16 add.

17 THE COURT: Thank you.

18 MR. CARDANI: Judge, I'll be brief as well. I
19 think this was a real, if I might, a textbook operation
20 on how to do a search warrant involving computers in a
21 day and age as technology has evolved. There was no way
22 to search through these things on-site.

23 I think the best -- the toughest legal argument
24 that I tried to address in our response has to do with
25 once you have an awful lot of information in retrievable

1 form, how is it -- are there any limitations you can
2 have that are fair to be put on in your review of that
3 evidence? And I can keep coming back to the paper days.
4 If an agent had a white collar warrant, and there is
5 boxes and boxes of material, it's the equivalent, in
6 this case, I think, of having the computers in a
7 searchable form.

8 I think it's a strong argument that every bit
9 of information on the computer can be reviewed by
10 qualified agents to determine if something is within the
11 scope of a search. And it also can be a continuing one,
12 that the investigation can build during the search of
13 that, as it can be done on the site of a search in a
14 paper warrant. One file may be thought of as irrelevant
15 but based on the investigation as it evolves during the
16 search, other things became fair game. Other agents may
17 have some input.

18 And there is no rule that says we are under a
19 time limit on how long that review can take. So I think
20 that that stuff can be done right up to the point of
21 trial. And if fair -- if relevant material comes out of
22 those computers, whether the request is from me or from
23 Mr. Gorder or Ms. Anderson based on the state of the
24 investigation, I think it's all fair game.

25 And I think the cases support us. The recent

1 cases that have come out of the courts -- the courts
2 have been grappling with this, the *Banks* case and the
3 other *Hay* case talk about the consent -- the computer
4 searches, and I think they all support that position.

5 It's a difficult one because we're talking
6 about just so much information now. Everything is going
7 into computers, so the courts are struggling to keep up
8 with the technology. But I think that they've come down
9 on the side of what's fair for the circumstances. And I
10 think that the license that -- the permission that Agent
11 Anderson had was based on the warrant which allowed her
12 to seize all of the computers. Judge Cooney allowed
13 that. That's expressed. And then the question becomes
14 incorporation.

15 The warrant -- the affidavit was extensive.
16 And it was incorporated. It was incorporated -- you
17 know, in the application itself, it was incorporated
18 within the warrant itself. It was present on-site. It
19 was reviewed by the agents. So under Ninth Circuit law,
20 I really don't think there is any question that that
21 affidavit was fairly part of the search warrant itself.
22 And it was used as a limiting device. And you've heard
23 how that was done.

24 And the issue of willfulness is broad. The
25 court is aware of that. And so I think that really

1 allows agents to search -- some cases have indicated
2 through the entire business records of a business in a
3 tax crime to determine if the links can be made to show
4 certain things. So it is fairly broad.

5 And I think that agents are allowed to go, as I
6 said, through a computer search every bit of information
7 to determine if there is relevance to the case.

8 To the extent that there is any problem with
9 that, the question is not total suppression. The
10 question is partial suppression and also good faith
11 mixed in there.

12 If a particular item is offered by the
13 government at trial, and we'll be offering some of the
14 items coming out of the computers, there's no doubt
15 about that, if there is a particular problem in terms of
16 scope, I suspect some of those things can be dealt with
17 at trial, to the extent they need be.

18 I think the motion needs to be denied in its
19 entirety because there was probable cause, what was done
20 was fair, and the whole touchstone of the Fourth
21 Amendment is what is reasonable under the circumstances.

22 And what these agents did here in detailing the
23 probable cause and incorporating the affidavit, in
24 acting in good faith in every step of the way, and
25 seeking legal advice, I think the testimony was on more

1 than one occasion from the prosecutor who knew the most
2 about the case, shows that they were trying to be
3 reasonable. They were trying to act within the
4 strictures of the Fourth Amendment, case law as given by
5 the prosecutor to the agents, by seeking another warrant
6 for child pornography, reasonable. And also by -- we
7 didn't get into this, but in the papers, they described
8 trying to avoid attorney-client communications, which
9 these days can be found all over computers.

10 Search terms were done on there to try to
11 shield the agents working on this case from getting into
12 privileged material without review by what we call taint
13 reviewers, attorneys or agents.

14 THE COURT: Who was your taint lawyer?

15 MR. CARDANI: David Atkinson is part of that
16 taint analysis. He's an AUSA up in Portland.

17 THE COURT: Uh-huh.

18 MR. CARDANI: So my point is that agents,
19 again, acted reasonable every step of the way. And I
20 think a fair reading of the cases reflect that. And I
21 would ask that the court deny the motion in every
22 respect.

23 And on the consent issue, Jonah Sedaghaty had
24 the legal ability to provide consent. He was a
25 director. He was the only one on the premises. His

1 father, the defendant, was away. The attorney on the
2 premises, able to review all of the materials, including
3 the affidavit itself.

4 Signing a consent form, I think this is a --
5 under the legal analysis of consent, that we've met our
6 burden by quite a bit on showing that there was a valid
7 consent to seize materials that may or may not have been
8 separate from the scope. And I think that that is a
9 legal analysis. Whether some of these things were or
10 were not part of the warrant is a legal conclusion.
11 That's not for the agent to determine as a matter of law
12 or as a matter of what she did. She sought guidance
13 because she thought it might have been in the gray area,
14 I submit.

15 The cautious approach, the one taken here,
16 would be that may be a gray area, but if someone is
17 there that can provide the consent, in the presence of
18 their lawyer, ask them if they are willing to do so.
19 That was done here. And it was obtained under consent.

20 So I think there is a fair argument that a lot
21 of the challenged materials do come within the scope
22 that sought guidance on and ended up getting consent, so
23 I don't want to rest upon consent for the admissibility
24 of this material at trial, but I think that that is
25 certainly a big part of it because it was obtained.

1 THE COURT: One thing I'm going to look back at
2 because I remembered Ms. Anderson's affidavit a bit
3 differently than her testimony today, I'm not saying --
4 I may have just read it wrong or too quickly, but at any
5 rate, the young Mr. Sedaghaty's consent is one thing. I
6 had made a little note that Mr. Berger had also
7 consented, but what I hear is that it was -- the consent
8 was given in his presence. That's your position, right?

9 MR. CARDANI: It's at least that. Whether he
10 uttered the words "I consent too," I don't know the
11 answer to that. Does the court wish to hear that
12 from --

13 THE COURT: No, no. But I only bring it up
14 because I had a little different -- you know, I read the
15 record, as I told you before, and that's the only tiny
16 little surprise that came up to me today, frankly.

17 Do you remember something about that, Mr. Wax?

18 MR. WAX: No. I was going to ask you if I
19 could make a comment about the scope issue.

20 THE COURT: Sure.

21 MR. CARDANI: That's all I have, Judge.

22 THE COURT: You can. You both have strong and
23 weak arguments.

24 Mr. Cardani, if you took the position that
25 permission to search the house was also permission to

1 search the green -- whatever they were -- trailers,
2 that's not one of your strong arguments.

3 And just like you had some that weren't so
4 strong either. You can talk about it if you want.

5 MR. WAX: Judge, in terms of the scope of the
6 search, I think that the government's focus on the
7 difficulty of searching computers is in this case in
8 part a red herring.

9 If we focus for a minute on paragraph 17 of
10 Ms. Anderson's July 6th declaration, she's recognizing
11 that within the house, they find these boxes of
12 videotapes, they find the prisoner letters. And there
13 is question in her mind, a question in Mr. Cardani's
14 mind, is all that within? Is some of that within or
15 some of that without the scope of the warrant? That
16 seems to me to be highly significant, and should inform
17 the question about the computer searches because as I
18 see it, it's the same issue.

19 The government could very easily in its
20 Attachment B to the warrant have said records and
21 communications including blah-blah-blah, pertaining to
22 the preparation of an IRS form. And note the language,
23 "pertaining to the preparation of." They could have had
24 another paragraph that says, records and communications
25 relating to the reasons why this mistake were made.

1 Records and communications relating to the allegation
2 that --

3 THE COURT: You may not use the word "mistake,"
4 but I understand your argument.

5 MR. WAX: That the -- you know, money was
6 directed to, you know, fund Chechnyan mujahideen.

7 THE COURT: Sure.

8 MR. WAX: They just did not do that.

9 THE COURT: I get your argument, Mr. Wax. You
10 can continue if -- I don't want -- if you have something
11 more to say, go ahead, but I even got it before.

12 MR. CARDANI: Judge, the green trailer issue,
13 just to be sure, I have never taken the position that
14 the green trailers were fair game for the warrant. In
15 fact, to the contrary. And that is contained in her new
16 affidavit. She was instructed that they were outside.

17 THE COURT: Sure.

18 MR. CARDANI: When I say that there is some
19 things on the cusp, I'm talking about stuff coming out
20 of the house.

21 THE COURT: Sure, okay. All right. I do want
22 to say this: Thank you very much for your economy. And
23 the briefs were marvelous on the issue here. I usually
24 don't get that good of briefs. And I enjoyed them. And
25 because they were so well written, they made me read

1 them a couple of times. That doesn't happen often.

2 Thank you.

3 MR. MATASAR: Your Honor, there is one thing
4 before we go, and that is I think the CIPA rules imply
5 that the government gets some time to respond. And I
6 don't know if you want to set an arbitrary 30 days or
7 some sort of time limit. I don't know what they are
8 intending to do. But given that the trial date seems to
9 be rapidly approaching, we want to make sure that there
10 is some sort of time limit for them to respond. I don't
11 want to suggest that, or maybe they intend to do it
12 sooner. I'm not sure.

13 THE COURT: If you have something, that's fine.
14 I, frankly -- that's one of the latter things that came
15 to my attention. I haven't carefully looked at all of
16 that. I've got just an overt view of it. If you have
17 something to say about whether you want to respond to
18 that, that's -- now is the time to do that.

19 MR. GORDER: Your Honor, I'll take
20 Mr. Matasar's suggestion of 30 days. I'm not sure we
21 will need to respond beyond what's already before you,
22 but something like this, we'll have to consult with main
23 justice about, so --

24 THE COURT: Sure.

25 MR. GORDER: -- 30 days will be fine.

1 THE COURT: All right. That's great. If you
2 don't get enough clarity in my written materials, let me
3 know because I know you need your record in this case.

4 All right. Thank you very much.

5 (The proceedings were concluded at 12:23 p.m.)
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CERTIFICATE

I, Deborah Wilhelm, Certified Shorthand Reporter for the State of Oregon, do hereby certify that I was present at and reported in machine shorthand the oral proceedings had in the above-entitled matter. I hereby certify that the foregoing is a true and correct transcript, to the best of my skill and ability, dated this 22nd day of July, 2009.



Deborah Wilhelm
Deborah Wilhelm, RPR
Certified Shorthand Reporter
Certificate No. 00-0363